IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9278 of 2004

...

Shri Sopanrao Vithalrao Gawali ...Petitioner

v/s.

Shri Pandurang Bhausaheb Kalokhe

and ors. ...Respondents

...

Mr.A.B. Avhad for the Petitioner.

Mr.S.B.Deshmukh i/b Mrs.Vinita V. Bakre-Shastri for Respondent No.1 & 2.

...

CORAM: D.K.DESHMUKH, J.

DATED: 14th September,2005

P.C.:

1. By this petition the Petitioner challenges the order passed by the Appellate Court dated 24-9-2004 holding that the original plaintiff has established that he is in possession of Gat No.1261 and therefore

has granted temporary injunction restraining the present Petitioner/Defendant from disturbing his possession. It is this order of temporary injunction which is challenged in the present petition.

2. The Appellate Court has held that though there is a sale deed executed by a person who had share in this land in favour of the Plaintiff, there is a recital in the sale deed executed between the vendor of the Petitioner and the Plaintiff that possession of this land has been handed over to the Plaintiff. The Appellate Court has held that though because the sale deed was not registered, it will not result in transferring the title in favour of the Plaintiff, the document can be relied on to find out who is in possession and therefore relying on that document, the Appellate Court has held that the Plaintiff has prima facie established that he is in possession of the land. The Appellate Court has further held that therefore it was for the present Petitioner to show independently of the recital of the sale deed in his favour that on the date on which the sale deed was executed by the vendor in favour of the Petitioner, the vendor was in possession of the land on that date. The Appellate Court has observed that the Petitioner has not produced any evidence, documentary or oral, which will prima facie establish that on the date of the sale deed the vendor of the Petitioner was in possession of the land and therefore on this finding the Appellate Court had granted temporary

injunction in relation to one of the land in favour of the Plaintiff.

3. The learned Counsel appearing for the Petitioner conceded that the Petitioner has not produced any documentary or oral evidence before the trial court or the appellate court which will show that on the date on which the sale deed was executed in favour of the Petitioner, the Vendor of the Petitioner was in possession of the land. The submission of the learned Counsel was that the Petitioner should be given one week adjournment so that he can produce those documents in this Court and the learned Counsel supported his request by contending that because this court has kept pending the Petition, the Petitioner is entitled to adjournment of one week.

4. In my opinion, the argument is entirely misconceived. Due to pendency of large matters in the court, some matters remained pending in court for unreasonable long time, because the court for various reasons is not in a position to pay attention to each matter promptly. That cannot be ground for the litigant to seek adjournment. That such argument was advanced in court itself is surprising. Secondly, even if adjournment is granted and the Petitioner produces the documents here, in law this court is not entitled to look into those documents for the first time, because the court considering the petition under Article 227 of the Constitution of India is not

the court of facts, therefore, request cannot be granted.

5. Perusal of the order impugned shows that the Appellate court has given reason in detail for the order that it proposed to make. There were two survey numbers involved in the suit, the court has on the basis of the material produced by the parties recorded a finding in relation to one survey number that the Plaintiff has not been able to establish that the Plaintiff was in possession of that land and therefore has not granted temporary injunction in favour of the Plaintiff. Temporary injunction is granted in relation to other land only because the court prima facie found that the Plaintiff is in possession and for failure of the Defendant to show by producing evidence that on the date of the sale deed his vendor was in possession of the land.

6. Taking overall view of the matter, therefore, the order impugned is perfectly legal order and therefore, it cannot be interfered with in the jurisdiction of this court under Article 227 of the Constitution of India. Petition is, therefore, rejected. The Petitioner is also directed to pay as and by way of costs of this petition Rs.5000/- to the Respondent No.1.